

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

VERONICA T. COTTON,

Case No. 16-cv-1548-pp

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of the
Social Security Administration,

Defendant.

**ORDER GRANTING PLAINTIFF'S
REQUEST TO PROCEED *IN FORMA PAUPERIS* (DKT. NO. 2)**

The plaintiff has filed a complaint requesting that the court review the Commissioner's denial of her Social Security Disability Insurance claims. Dkt. No. 1. Along with the complaint, the plaintiff filed an affidavit in support of her request that the court allow her to proceed with the case without paying the filing fee. Dkt. No. 2. In order to allow a plaintiff to proceed without paying the filing fee, the court must first decide whether the plaintiff has the ability to pay the filing fee, and if not, must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and (e)(2)(B)(i).

In the affidavit, the plaintiff indicates that she receives \$608 per month in W-2 assistance, \$221 in child support, and \$605 in food share benefits, for a total monthly income of \$1,434. Id. at 5. She is not married, but supports three minor children. Id. at 2. The plaintiff indicates that she has monthly expenses totaling \$940, consisting of \$800 for rent and \$140 for utilities. Id. at 4. The

\$605 in food share benefits all goes toward food for her family, and she relies on local food pantries to supplement their needs. Id. 5. The plaintiff states that she applies for energy assistance during the heating season each year because she is behind on utility payments. Id. The affidavit also states that the plaintiff has \$5 in a checking account. Id. at 3. Thus, the plaintiff has a gross income of \$1,434 per month and expenses of \$1,545. The court concludes from this information that the plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

In her complaint, the plaintiff asserts that the ALJ's decision is not supported by substantial evidence and is contrary to law. The court finds that the plaintiff has stated a claim that the Commissioner's decision denying the plaintiff's application for benefits is not supported by substantial evidence, or is contrary to law and regulation. At this early stage in the case, the court concludes that there may be a basis in law or fact for the plaintiff's appeal of

the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **ORDERS** that the plaintiff's motion for leave to appeal *in forma pauperis* (Dkt. No. 2) is **GRANTED**.

Dated in Milwaukee, Wisconsin this 6th day of December, 2016.

BY THE COURT:

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line extending to the right.

HON. PAMELA PEPPER
United States District Judge